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NEWS RELEASE

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Public Citizen Condemns WTO Attack on U.S. Efforts to Reduce Teen Smoking

In Final Appeals Ruling, Global Commerce Agency Orders U.S. to Drop, Change Landmark Obama Youth Anti-Smoking Law

WASHINGTON D.C. – The World Trade Organization’s (WTO) final ruling today against U.S. efforts to reduce teen smoking shows that our current trade regime is simply incompatible with basic public health regulation, Public Citizen said. With today’s ruling, the WTO Appellate Body has now ordered the U.S. to water down or get rid of a key plank of its landmark Family Smoking Prevention and Tobacco Control Act of 2009 (FSPTCA), one of the few policy achievements of the Obama administration’s first term. The act banned sale of candy and other sweet-flavored cigarettes used to attract children to smoking.

“The Obama administration and Congress must not bow to yet another ruling from a so-called trade agreement tribunal demanding that the U.S. get rid of yet another important health or environmental policy,” said Lori Wallach, director of Public Citizen’s Global Trade Watch. “The Obama administration must stand with the thousands of Americans who have signed [a Consumer Rights Pledge](#) calling on the U.S. to not comply with these illegitimate trade pact rulings and to stop the Trans-Pacific Partnership (TPP) trade negotiations that would greatly intensify this problem.

“Countries should not be weakening their public health laws to comply with the anti-health, anti-environmental WTO rules. This case underscores why countries must insist that WTO rules be altered and that no new agreements use the same corporate backdoor deregulation model,” said Wallach. “If there is any silver lining to today’s ruling, it is that it will confirm the views of growing numbers of consumers, citizens and governments that the WTO must be shrunk or sunk.”

The Obama administration is considering expanding some of these anti-consumer rules in the first trade deal it is negotiating – the nine-nation TPP. This latest WTO ruling, along with two others in 2011 against country-of-origin labels on meat and dolphin-safe labels on tuna,

show that a new approach to trade policy is needed – one that puts consumers, the environment and communities first, said Public Citizen.

Background

The WTO Appellate Body's decision today upheld the major conclusions of a September 2011 WTO ruling from a panel of three diplomats from Costa Rica, Japan and Uruguay, who ruled that the U.S. ban on sweet-flavored cigarettes (which are used to entice teenagers into smoking) violated a never-before interpreted provision of the WTO's Agreement on Technical Barriers to Trade (TBT). Public health experts have concluded that these narrowly targeted bans help stop smoking before it starts.

But the panel reasoned that the ban discriminated against Indonesian clove cigarettes, even though both U.S. and foreign tobacco companies were prohibited from selling clove cigarettes in the U.S., and even though other sweet flavors like chocolate and cola also were banned. In its WTO attack on the FSPTCA, Indonesia successfully argued that the ban as it applied to clove cigarettes violated the WTO TBT rules because the U.S. did not ban all flavored cigarettes (menthol-flavored cigarettes were exempted from the ban).

While the FSPTCA actually does contemplate extending the ban to menthol cigarettes, U.S. lawmakers advocated for a gradual approach to menthols, which are smoked (unlike other sweet cigarettes) primarily by adults. Policymakers had concerns that banning cigarettes primarily smoked by adults would have created dangerous black market activities and would not target teenage smoking. The WTO panel and Appellate Body gave little weight to these science-backed arguments and effectively concluded that imports have to be carved out from nations' regulatory schemes.

Of nearly 200 rulings in 16 years, this was the first time that the WTO ever found a violation under this WTO provision, which has long been of concern to consumer advocates, given the threat that it could be interpreted in the all-encompassing way that it was in this final ruling. Today's was one of the first rulings under the TBT, which is one of 17 agreements administered by the WTO.

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